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SIPDIS

STATE FOR IO/SHA, DRL/MLA

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TAGS: [PHUM](#) [UNHRC](#)

SUBJECT: SR ON INDEPENDENCE OF JUDGES AND LAWYERS ON THE CUBAN FIVE

1. Mission received the following communication from Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers regarding the recent decision by the United States Court of Appeals ordering a retrial of the case against Mr. Antonio Guerrero Rodriguez, Mr. Fernando Gonzalez Llort, Mr. Gerardo Hernandez Nordelo, Mr. Ramon Labanino Salazar and Mr. Rene Gonzalez Sehwerert. This communication has been forwarded to IO/SHA via e-mail and is included with number 74 on the Geneva 2004 Communications Log.

2. Begin text of letter:

REFERENCE: AL C/SO 214 (3-3-12)
USA 7/2005

Excellency,

31 August 2005

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Commission on Human Rights resolution 2005/33.

In this connection, I would like to take this opportunity to welcome the recent decision by a United States appeals court to order a retrial concerning;

Mr. Antonio Guerrero Rodriguez, born in Miami, Florida, on 16 October 1958; resident of South Florence; American citizen.

Mr. Fernando Gonzalez Llort (Ruben Campa), born in Havana City, Cuba, on 18 August 1963; resident of Oxford, Florida; Cuban citizen.

Mr. Gerardo Hernandez Nordelo (Manuel Viramontes), born in Havana City, Cuba, on 4 June 1965; resident of Blein Boulevard, Lompoc, Florida; Cuban citizen.

Mr. Ramon Labanino Salazar (Luis Medina), born on 9 June 1963 in Havana City, Cuba; resident of Beaumont, Florida; Cuban citizen.

Mr. Rene Gonzalez Sehwerert, born on 13 August 1956 in Chicago, Illinois; resident of Bradford, Florida; American citizen.

On 5 August 2005 a United States appeals court ruled that the original trial concerning these five defendants was unfair because it was not possible to receive a fair trial in Miami due to the biased environment in which the trial was held and due to the large number of Cuban exiles who held prejudicial views regarding the Government of Cuba.

By way of background, in September 1998, Mr. Antonio Guerrero Rodriguez, Mr. Fernando Gonzalez Llort (Ruben Campa), Mr. Gerardo Hernandez Nordelo (Manuel Viramontes), Mr. Ramon Labanino Salazar (Luis Medina), Mr. Rene Gonzalez Sehwerert were arrested in Florida. In June 2001, they were tried in Miami Dade County. Lawyers for the defendants requested that the trial be conducted in another city, located in Broward County, because they considered that impartiality could not be guaranteed in Miami. The lawyers' request was however rejected. Antonio Guerrero Rodriguez was sentenced to life imprisonment plus 10 years. Fernando Gonzalez Llort was sentenced to 19 years' imprisonment. Gerardo Hernandez Nordele was condemned to two life sentences plus 15 years. Ramon Labanino Salazar was sentenced to life imprisonment plus 18 years and Rene Gonzalez Sehwerert to 15 years' imprisonment. The appeal, took place in March 2004, and a decision to order a retrial was finally announced on 5 August 2005 by the US Appeals Court.

In addition, it has been alleged that the five defendants were denied access to a lawyer during the first two days following their arrest. Subsequently, they were kept in solitary confinement during the 17 months preceding the trial. It is alleged that before and during the trial, all the evidence in the case file was kept in a room under the court's control, and that the defence lawyers could access this room only after going through a bureaucratic procedure.

The defence lawyers were also prohibited from making copies of the documents in evidence and from taking notes in order to analyse them. In this context, I would like to refer your Excellency to the Working Group on Arbitrary Detention's Legal Opinion No. 19/2005 issued on 27 May 2005, which found that the five defendants had been arbitrarily detained and noted a number of due process violations.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular:

- principle 2: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

I would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- principle 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

- principle 21. "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

I ask your Excellency's Government that the retrial of this case be conducted before an independent and impartial court and in a different location, and urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations ensured.

Moreover, it is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Commission, I would be grateful to be kept informed of the outcome of this case.

Please accept, Excellency, the assurances of my highest consideration.

Leandro Despouy
Special Rapporteur on the independence of judges and lawyers

End text of letter.

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